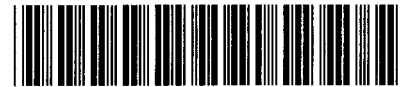


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MEMORANDUM
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Arizona Corporation Commission

DOCKETED

MAY 23 2011

TO: Docket Control

2011 MAY 23 A 11: 08

FROM: Steven M. Olea
Director
Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

DATE: May 23, 2011

RE: IN THE MATTER OF THE APPLICATION OF TALTON COMMUNICATIONS, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE CUSTOMER OWNED PAY TELEPHONE SERVICES (DOCKET NO. T-20717A-09-0578)

On December 23, 2009, Talton Communications, Inc. ("Talton" or "Company" or Applicant") filed an Application to obtain a Certificate of Convenience and Necessity ("CC&N") to provide customer owned pay telephone ("COPT") service. Talton was awarded a contract with U.S. Immigration and Customs Enforcement ("ICE") to provide pay telephone services on May 6, 2009.

On January 13, 2010, Staff issued its First Set of Data Requests to Talton. On January 19, 2010, Staff issued its Second Set of Data Requests to Talton. On January 26, 2010, Talton provided Responses to Staff's First and Second Sets of Data Requests. Several formal and informal communications for clarification were exchanged between Staff and Talton's representative, Technologies Management Inc.

On February 17, 2011, Craig A. Marks notified the Commission via a notice, that he had been retained as counsel for the Applicant.

The proposed rates, charges, terms and conditions for COPT service are contained in Talton's proposed Customized tariff filed with the Application. Talton's proposed tariff would apply to the provision of prepaid and collect calling pay telephone services to inmates and persons incarcerated in Correctional/Confinement Institutions within the State of Arizona.

Talton is currently providing institutional calling service to seventeen Immigration and Customs Enforcement ("ICE") facilities in ten states including Arizona, California, Colorado, Florida, Georgia, New Jersey, New Mexico, New York, Texas, and Washington. Talton indicated in its Responses to Staff's Data Requests that it is certified or registered to provide service to correctional facilities in Alabama, California, Colorado, Florida, Georgia, New Jersey, New Mexico, New York, Tennessee, Texas, and Washington.

Staff confirmed with the Washington Utilities and Transportation Commission that Talton's registration became effective January 21, 2010. Staff also contacted the California

Public Utilities Commission ("CPUC") and the New Mexico Public Regulatory Commission ("NMPRC"). The NMPRC granted Talton a certificate on February 18, 2010.

On January 8, 2010, the Consumer Protection and Safety Division ("CPSD") filed a Protest of the Consumer Protection and Safety Division to the Application of Talton Communications, Inc., A.10-01-004, before the CPUC. The CPSD alleged that (1) Talton had been unlawfully providing telecommunications services in California without prior authorization from the Commission (2) Talton failed to meet the \$25,000 financial requirement to operate as a switchless reseller in California; and (3) Talton failed to make all required disclosures in its Application in regards to its verification of finances, officers, and affiliation with Evercom Systems. Under the terms of a Settlement Agreement, Talton agreed to pay a fine of \$11,000, Talton agreed to timely file any and all reports required by the Commission as long as it provides services in California and the CPSD agreed that the Application for a CC&N should be granted. The CPUC granted Talton a CC&N to provide interexchange services in the State of California on June 24, 2010. In the Decision that granted the CC&N, the CPUC also approved and adopted the Settlement Agreement between Talton and the CPSD.

On January 26, 2010, Talton received a formal notice of inquiry from the Federal Communications Commission ("FCC") addressing issues surrounding reporting and payment of federal universal service funds. Staff contacted the FCC Enforcement Bureau but was unable to obtain any additional information due to the confidentiality of the Notice of Inquiry. On February 24, 2011, Talton provided Staff a copy of its confidential and proprietary response, dated March 29, 2010, that was sent to the FCC. Talton also indicated that the FCC has taken no additional action since Talton responded to the inquiry.

Comments have been filed in the Docket by two Parties. On January 19, 2010, Securus Technologies ("Securus") filed comments indicating that neither Securus nor Evercom are affiliated with Talton and expressed its concerns about Talton potentially providing telecommunications services in Arizona without the proper authority. On January 20, 2010, Public Communications Services ("PCS") filed a letter addressed to Commissioner Bob Stump stating that Talton may be providing inmate telephone services in the State of Arizona without the proper regulatory authorities. PCS also stated in another letter dated January 25, 2010, that Talton began operations in the States of California and Washington prior to receiving proper state certifications.

On February 1, 2010, Talton filed a response to address the comments and concerns of Securus and PCS that were previously filed in the Docket. Talton has indicated that while the majority of the traffic at ICE facilities is interstate and international, there is a small amount of intrastate traffic. In its response letter, Talton acknowledges and takes responsibility for its lack of understanding of regulatory requirements in obtaining intrastate certification prior to commencing service in Arizona.

A customer information placard was not provided with the Application. Talton stated in its Application that the customer information placard describing the services offered and the

instructions for operation are not applicable to inmate phones. In response to Staff's First Set of Data Requests, Talton indicated that inmates receive an information packet at the time service is installed by a new provider. The packet contains information on rates, dialing instructions, rules, and restrictions. Inmates are not allowed to call any number or person other than those approved by the Correctional Facility. Information for called parties is available at the facility and on Talton's website. In addition, on the day service is installed at any new facility, inmates are allowed a full day of free calling to friends and family for the purpose of providing information on setting up Prepaid Accounts.

Additionally, Talton stated that the following information is provided to users of its services:

1. Dialing instructions and rates are available via automated announcements before each call is placed.
2. Service limitations are typically imposed by the correctional facility (allowed called-to numbers, call duration, telephone access, etc.).
3. Inmates are not allowed access to toll-free telephone numbers.
4. The toll free customer service number is shown on Local Exchange Company ("LEC") bills and will also be on Talton's website.

Talton also indicated that it would make the following options available to the caller and/or called party before any payphone charges are assessed:

1. Rate quotes for collect calls are available upon request and prior to connection of any call placed.
2. Rate quotes are provided via an automated announcement during the call set-up process and prior to call acceptance.
3. The called party may listen to the rates and opt to refuse the call without incurring any charges.

The Consumer Services Section of the Utilities Division reports no complaints or inquiries filed within Arizona from January 1, 2008 through February 25, 2011. During that same time period one favorable opinion was filed in 2010. Consumer Services also reports that as of February 25, 2011, Talton is in good standing with the Corporations Division of this Commission.

Staff Analysis

Staff's analysis indicates that Talton is an Alabama-based company founded in 2002 when Talton purchased the public payphone assets of the Alabama operation from Evercom. A non-compete agreement was in place until July 2006, as a result of the asset purchase agreement, between Talton and Evercom (now Securus). Upon expiration of the non-compete agreement in July 2006, Talton was able to pursue inmate telephone contracts.

Talton was awarded a contract with ICE on May 6, 2009, as indicated in Talton's Responses to Staff's First Set of Data Requests, and began providing debit and prepaid institutional services at the Florence, Arizona ICE facility on November 20, 2009. Talton filed its Application in Arizona on December 23, 2009, approximately one month after beginning service.

Staff believes that Talton should have been aware of the regulatory requirements in the various states it was pursuing authority as a service provider. Talton indicated that it took immediate action once it realized its errors

Currently, intrastate calls at the Arizona facility are being handed off to Legacy Long Distance International Inc.¹, via Telmate, who provides the software, end user customer, billing, rating, remitting and collection of taxes, and outclearing² of all calls for Talton. Talton does the marketing, provides the equipment, maintenance, and field service to the accounts.

ICE stated in its letter to Staff dated February 5, 2010, that 90% of all Detainee Telephone System ("DTS") calls are interstate. In addition, ICE stated that it supports immediate approval of Talton's Application in Arizona. (See Attachment A)

Based on the positive feedback ICE has received regarding Talton's operations in Arizona and the responsibility that ICE has in providing emergency DTS services to detainees, Staff believes that approval of Talton's Application would be in the public interest.

Prepayment mechanisms, such as those described in Talton's tariff relating to Prepaid Debit and Prepaid Collect Services are a form of advance payment. Deposits, prepayments, and advance payments are generally protected by a performance bond or irrevocable sight Draft Letter of Credit ("ISDLC"). Therefore, Staff recommends that Talton be required to procure a performance bond or ISDLC in the amount of \$10,000.

Staff considered several factors in evaluating Talton's Application. Staff recognized that there was a minimal time period of approximately one month lapse from the time Talton started providing service and when it filed its Application. Staff also took into consideration that Talton took immediate action to rectify the situation by filing the Application. Additional factors include 90% of the calls are interstate and are currently being processed by a company already certificated in Arizona, in addition to the positive feedback received from ICE regarding Talton's operations in Arizona.

¹ The Commission granted Legacy Long Distance International, Inc. a CC&N to provide Alternative Operator Services in Decision No. 65996, dated June 17, 2003.

² Outclearing is an Operator Service Provider function whereby collect call records are separated and sent to the various Incumbent Local Exchange Carriers ("ILECs") for billing.

Staff also evaluated alternatives in this matter including conditions and a fine. Staff does not believe these are necessary at this time. However, Talton should be put on notice that it must become familiar with the rules and regulations of providing telecommunications service in Arizona and that any future violation of the Commission's requirements may result in penalties and sanctions up to and including revocation of Talton's CC&N. Staff recommends approval of the Application.

SMO:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen Copies

SERVICE LIST FOR: TALTON COMMUNICATIONS, INC.
DOCKET NO. T-20717A-09-0578

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Ms. Lyn Farmer
Chief Administrative Law Judge, Hearing Division
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Office of Acquisition Management
U.S. Department of Homeland Security
801 I Street NW Suite 900
Washington DC 20536



U.S. Immigration
and Customs
Enforcement

5 February 2010

Pamela Genung
Public Utilities Analyst V
Arizona Corporation Commission
1200 W Washington
Phoenix, AZ 85007

Subject: Talton Communications Inc., Arizona Docket No. T-20717A-09-0578

Ms. Genung:

The U. S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Office of Acquisition Management (OAO), submits the following in support of the application by Talton Communications to operate in the State of Arizona.

The ICE Detainee Telephone System (DTS) provides telephone services for approximately 30,000 ICE detainees, including a pro bono service network for detainees to make pro bono calls to consulates and pro bono attorneys, and system hardware and service for debit, collect, and pre-paid collect for local, long-distance and international calls at specific ICE facilities. Talton Communications is the ICE awardee of contract HSCEDM-09-C-00009 for operation of the Detainee Telephone System (DTS). The DTS contract was awarded on 6 May 2009. Actual implementation, however, was delayed until September 2009, due to a series of protests from the competitor who was not selected for the contract. Public Communications Services (PCS), the contract holder at the time, did not bid on the follow-on contract on the mistaken belief that the solicitation was not released even though ICE provided constructive notice to all potential offerors in accordance with the Federal Acquisition Regulation (FAR).

Moreover, the actual transition to Talton Communications was delayed even further, through February 26, 2010 because of a particular clause in a modification to the PCS contract regarding transition to the new contract. This modification was executed to maintain balance between pro bono and revenue-producing calls.

During the recent transition of service at the Otero facility in New Mexico, PCS notified us that Talton Communications had not met all of the requirements for conducting business in the State of New Mexico. The DTS in New Mexico was immediately re-connected to the prior contractor, PCS, pending approval from the New Mexico Utilities Commission. It was confirmed that no transactions occurred which required any public consumer money transacted to be refunded.

Arizona Corporation Commission

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Subject: Talton Communications Inc., Arizona Docket No. T-20717A-09-0578

In early January, the state of California and the former contractor, PCS, notified our office of Talton Communications' late and incomplete filing with the California Commission. PCS also notified us of Talton Communication's status in Arizona. Recently, Talton has subcontracted with a licensed vendor in Arizona and California in order to comply with state requirements and their contract with ICE pending approval of the state licenses. If Talton Communications is to be penalized for operating prior to approval of their application, it is understood, and ICE takes no position on such penalties. Notwithstanding, the Arizona Public Utilities Commission should be aware that over 90% of all DTS calls are interstate, and Talton Communications has filed all certifications for approval with the FCC. Additionally, ICE will convene a panel to independently determine what, if any, penalties should be imposed on DTS for operating its business prior to approval of the issuance of a license. Any potential penalties from Talton Communications' oversight regarding obtaining timely licensing approval are not considered an impediment to continue full deployment of the DTS. At this time, ICE has no intention to return to or further extend the contract of PCS, and no intention of reopening competition for new awards in the near future.

It should be brought to your attention that PCS and their partner, Securus, have provided a continuous stream of allegations regarding Talton Communications' alleged lack of adequate security, their rate structure, and the ability of their equipment to adequately support DTS requirements. In each case, ICE has investigated the allegations, involving a significant investment in time and money by this office. With the exception of pending licenses in New Mexico, California, and Arizona, ICE has found the allegations to be unfounded. Each transition delay requires the federal Government to extend the PCS contract, providing significant revenue to PCS, while delaying and preventing a timely DTS transition.

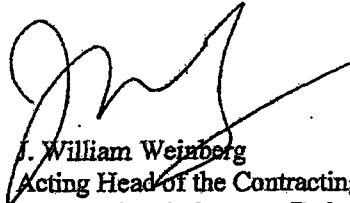
While investigating PCS' allegations, we received positive feedback for Talton Communications. Customers already transitioned to Talton Communications' pro bono platform and primary sites have universally praised Talton Communications' security features, service, and ability to provide reporting information. Additionally, there are indications that PCS itself may not have filed the same pro bono documentation which they accuse Talton Communications of not filing. This office will keep the State of Arizona advised of any developments concerning Talton or PCS.

ICE supports the approval of the application for licensing and tariff fees by Talton Communications. The DTS is an integral part of the ICE detention program as it is critical to security and safety of ICE detainees. In addition to Congressional mandates, facilities clearly indicate that the DTS ameliorates potential problems at their facilities.

We further recommend immediate approval for Talton Communications to initiate business operations in Arizona. If for any reason the state of Arizona determines that Talton Communications services should be disconnected or suspended, ICE will be placed in an extremely difficult position of providing emergency DTS services to detainees. The security features required as part of this system do not allow ICE to provide "off the shelf" telephone service. Moreover, if Talton Communications were to be temporarily suspended from operations in Arizona, this office has no intention of reinstating the previous vendor as an interim provider based on the aforementioned reasons.

Subject: Talton Communications Inc., Arizona Docket No. T-20717A-09-0578

Should you or your staff have any questions regarding this matter, please contact Shannon Ely, 202-732-2535, Shannon.Ely@dhs.gov, Contracting Officer, or Michael A. Gorman, 202-732-3468, Michael.A.Gorman@dhs.gov.



J. William Weinberg
Acting Head of the Contracting Activity
Immigration & Customs Enforcement (ICE)
Department of Homeland Security (DHS)